

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**IN RE MILOS LITIGATION**

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: **08 Civ. 6666 (LBS) (KNF)**  
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: **ECF Case**  
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**DECLARATION OF D. MAIMON KIRSCHENBAUM**

D. Maimon Kirschenbaum, under penalty of perjury, deposes and says:

1. I am a member of Joseph, Herzfeld, Hester & Kirschenbaum LLP. We, along with Berke-Weiss & Pechman LLP, represent Plaintiffs and the Class in the above-captioned matter. I am familiar with the facts and circumstances set forth herein.

2. To date, sixty-one (61) plaintiffs have submitted opt-in forms to be included in the FLSA Collective. Thirty-six (36) people submitted exclusion request forms and have been excluded from the Rule 23 Class. There are two hundred twenty (220) members of the Rule 23 Class.

3. Attached hereto as Exhibit 1 are true and correct copies of excerpts from the April 15, 2010 deposition of Costas Spiliadis ("Spiliadis deposition") in this litigation.

4. Attached hereto as Exhibit 2 is a true and correct copy of Plaintiffs' Exhibit 1 from the Spiliadis deposition, a January 25, 2004 e-mail from Camille Scuria to Spiliadis.

5. Attached hereto as Exhibit 3 is a true and correct copy of Plaintiffs' Exhibit 2 from the Spiliadis deposition, a February 9, 2004 questionnaire submitted by Defendants to the New York State Department of Labor.

6. Attached hereto as Exhibit 4 is a true and correct copy of Plaintiffs' Exhibit 3 from the Spiliadis deposition, an October 24, 2003 e-mail from Spiliadis to Reno Christou.

7. Attached hereto as Exhibit 5 is a true and correct copy of Plaintiffs' Exhibit 4 to the Spiliadis deposition, a January 30, 2004 e-mail from Maria Arguelles to Spiliadis.

8. Attached hereto as Exhibit 6 is a true and correct copy of Plaintiffs' Exhibit 5 to the Spiliadis deposition, a November 4, 2003 e-mail from Scuria to Spiliadis and his son, George Spiliadis.

9. Attached hereto as Exhibit 7 is a true and correct copy of Plaintiffs' Exhibit 6 to the Spiliadis deposition, an October 2, 2003 e-mail from Spiliadis to Christou and George Spiliadis.

10. Attached hereto as Exhibit 8 is a true and correct copy of Plaintiffs' Exhibit 7 to the Spiliadis deposition, a Milos restaurant employee handbook.

11. Attached hereto as Exhibit 9 is a true and correct copy of Plaintiffs' Exhibit 10 to the Spiliadis deposition, a daily schedule for Milos.

12. Attached hereto as Exhibit 10 is a true and correct copy of Plaintiffs' Exhibit 11 to the Spiliadis deposition, a March 17, 2005 e-mail from David Dangoor to Spiliadis.

13. Attached hereto as Exhibit 11 is a true and correct copy of Plaintiffs' Exhibit 13 to the Spiliadis deposition, an August 5, 2004 e-mail from Scuria to Spiliadis.

14. Attached hereto as Exhibit 12 is a true and correct copy of Plaintiffs' Exhibit 14 to the Spiliadis deposition, a February 9, 2004 e-mail from Scuria to Spiliadis.

15. Attached hereto as Exhibit 13 is a true and correct copy of Plaintiffs' Exhibit 15 to the Spiliadis deposition, a November 20, 2002 e-mail from Christou to Spiliadis.

16. Attached hereto as Exhibit 14 is a true and correct copy of Plaintiffs' Exhibit 16 to the Spiliadis deposition, the Payroll and Tip Information for the week ending October 26, 2003.

17. Attached hereto as Exhibit 15 is a true and correct copy of Plaintiffs' Exhibit 18 to the Spiliadis deposition, a January 21, 2004 e-mail from Scuria to Spiliadis.

18. Attached hereto as Exhibit 16 are true and correct copies of excerpts from the June 25, 2010 deposition of Maria Arguelles (“Arguelles deposition”) in this litigation.

19. Attached hereto as Exhibit 17 is a true and correct copy of Plaintiffs’ Exhibit 19 to the Arguelles deposition, a January 2007 Tips in Excess of Minimum Wage Report for Milos.

20. Attached hereto as Exhibit 18 is a true and correct copy of Plaintiffs’ Exhibit 22 to the Arguelles deposition, a February 1, 2004 e-mail from Spiliadis to Arguelles.

21. Attached hereto as Exhibit 19 is a true and correct copy of Plaintiffs’ Exhibit 23 to the Arguelles deposition, a February 13, 2004 e-mail from Scuria to Spiliadis.

22. Attached hereto as Exhibit 20 is a true and correct copy of Plaintiffs’ Exhibit 30 to the Arguelles deposition, a February 4, 2004 e-mail from Scuria to Spiliadis.

23. Attached hereto as Exhibit 21 is a true and correct copy of Plaintiffs’ Exhibit 31 to the Arguelles deposition, a February 9, 2004 e-mail from Scuria to Spiliadis.

24. Attached hereto as Exhibit 22 is a true and correct copy of Plaintiffs’ Exhibit 35 to the Arguelles deposition, a December 2003 dining room observation report prepared by Scuria.

25. Attached hereto as Exhibit 23 is a true and correct copy of Plaintiffs’ Exhibit 36 to the Arguelles deposition, a February 21, 2004 e-mail from Herve Pennequin to Arguelles.

26. Attached hereto as Exhibit 24 are true and correct copies of excerpts from the July 19, 2010 deposition of Mario Zeniou (“Zeniou deposition”) in this litigation.

27. Attached hereto as Exhibit 25 is a true and correct copy of Plaintiffs’ Exhibit 38 to the Zeniou deposition, an August 5, 2004 article in USA Today entitled, “Authentically Greek.”

28. Attached hereto as Exhibit 26 is a true and correct copy of Plaintiffs’ Exhibit 39 to the Zeniou deposition, a 2006 article from City Magazine.

29. Attached hereto as Exhibit 27 is a true and correct copy of Plaintiffs' Exhibit 40 to the Zeniou deposition, Zeniou's business card.

30. Attached hereto as Exhibit 28 is a true and correct copy of Plaintiffs' Exhibit 41 to the Zeniou deposition, an October 21, 2007 e-mail from Spiliadis to Zeniou.

31. Attached hereto as Exhibit 29 is a true and correct copy of Plaintiffs' Exhibit 42 to the Zeniou deposition, a dining room observations report.

32. Attached hereto as Exhibit 30 is a true and correct copy of Plaintiffs' Exhibit 43 to the Zeniou deposition, an August 13, 2004 e-mail from Scuria to Spiliadis.

33. Attached hereto as Exhibit 31 is a true and correct copy of Plaintiffs' Exhibit 45 to the Zeniou deposition, a September 22, 2004 e-mail from Scuria to Spiliadis.

34. Attached hereto as Exhibit 32 are true and correct copies of excerpts from the December 23, 2010 deposition of David Dangoor ("Dangoor deposition") in this litigation.

35. Attached hereto as Exhibit 33 is a true and correct copy of Plaintiffs' Exhibit 46 to the Dangoor deposition, a one page fact sheet on Milos letterhead.

36. Attached hereto as Exhibit 34 is a true and correct copy of Plaintiffs' Exhibit 48 to the Dangoor deposition, a one page document titled, "Reno Christou."

37. Attached hereto as Exhibit 35 is a true and correct copy of Plaintiffs' Exhibit 52 to the Dangoor deposition, a February 5, 2004 e-mail from Arguelles to Spiliadis.

38. Attached hereto as Exhibit 36 is a true and correct copy of Plaintiffs' Exhibit 54 to the Dangoor deposition, a February 29, 2004 e-mail from Spiliadis to Dangoor.

39. Attached hereto as Exhibit 37 is a true and correct copy of Plaintiffs' Exhibit 56 to the Dangoor deposition, an October 16, 2004 e-mail from Spiliadis to Dangoor.

40. Attached hereto as Exhibit 38 is a true and correct copy of Plaintiffs' Exhibit 57 to the Dangoor deposition, a June 29, 2007 e-mail from Spiliadis to Zeniou and Arguelles.

41. Attached hereto as Exhibit 39 is a true and correct copy of Plaintiffs' Exhibit 58 to the Dangoor deposition, a July 26, 2004 e-mail from Scuria to Spiliadis.

42. Attached hereto as Exhibit 40 are true and correct copies of excerpts from the December 14, 2010 deposition of Plaintiff Nikolaos Tsikitas in this litigation.

43. Attached hereto as Exhibit 41 are true and correct copies of excerpts from the August 18, 2010 deposition of Plaintiff Noumeir Bermeo in this litigation.

44. Attached hereto as Exhibit 42 are true and correct copies of excerpts from the August 20, 2010 deposition of Plaintiff Jose Onofre in this litigation.

45. Attached hereto as Exhibit 43 is a June 21, 2004 e-mail from Dangoor to Spiliadis produced by Defendants in this litigation and bearing Bates number DANGOOR 93.

46. Attached hereto as Exhibit 44 is a November 1, 2004 e-mail from Spiliadis to Dangoor produced by Defendants in this litigation and bearing Bates number DANGOOR 122.

47. Attached hereto as Exhibit 45 is a February 9, 2005 e-mail from Spiliadis to Dangoor produced by Defendants in this litigation and bearing Bates number DANGOOR 147.

48. Attached hereto as Exhibit 46 is a June 23, 2005 e-mail from Zeniou produced by Defendants in this litigation and bearing Bates number DANGOOR 161.

49. Attached hereto as Exhibit 47 is the September 20, 2005 affidavit of Reno Christou produced by Defendants in this litigation and bearing Bates numbers DANGOOR 241-243.

50. Attached hereto as Exhibit 48 is an October 30, 2005 e-mail from Spiliadis to Dangoor produced by Defendants in this litigation and bearing Bates number DANGOOR 281.

51. Attached hereto as Exhibit 49 is a January 17, 2007 e-mail from Dangoor to Spiliadis produced by Defendants in this litigation and bearing Bates number DANGOOR 337.

52. Attached hereto as Exhibit 50 is a January 18, 2007 e-mail from Spiliadis to Dangoor produced by Defendants in this litigation and bearing Bates number DANGOOR 339.

53. Attached hereto as Exhibit 51 is a May 9, 2007 e-mail from Dangoor to Spiliadis produced by Defendants in this litigation and bearing Bates number DANGOOR 353.

54. Attached hereto as Exhibit 52 is a June 11, 2007 e-mail from Spiliadis to Dangoor produced by Defendants in this litigation and bearing Bates number DANGOOR 356.

55. Attached hereto as Exhibit 53 is a November 14, 2007 e-mail from Tom Giocas to a group of people including Zeniou produced by Defendants in this litigation and bearing Bates number DANGOOR 392.

56. Attached hereto as Exhibit 54 is a November 27, 2007 e-mail from Tom Giocas to Dangoor produced by Defendants in this litigation and bearing Bates numbers DANGOOR 403-405.

57. Attached hereto as Exhibit 55 is a December 9, 2003 e-mail from Scuria to Spiliadis produced by Defendants in this litigation and bearing Bates numbers D 28991-92.

58. Attached hereto as Exhibit 56 is a true and correct copy of a December 18, 2003 e-mail from Scuria to Spiliadis produced by Defendants in this litigation and bearing Bates numbers D 28996-97.

59. Attached hereto as Exhibit 57 is a true and correct copy of a January 4, 2004 e-mail from Scuria to Spiliadis produced by Defendants in this litigation and bearing Bates numbers D 29007-29009.

60. Attached hereto as Exhibit 58 is a true and correct copy of a March 2, 2004 e-mail from Scuria to Spiliadis produced by Defendants in this litigation and bearing Bates numbers D 29062-63.

61. Attached hereto as Exhibit 59 is a September 3, 2004 e-mail from Scuria to Spiliadis produced by Defendants in this litigation and bearing Bates number D 29216.

62. Attached hereto as Exhibit 60 are true and correct copies of portions of the Employee Pay History Report for Christou produced by Defendants in this litigation and bearing Bates numbers D 30398-30408.

63. Attached hereto as Exhibit 61 is a true and correct copy of the decision in *Tandoor Rest., Inc. v. Comm'r of Labor*, No. PR-82-85 (Industrial Bd. of App. Dec. 23, 1987) cited in plaintiffs' memorandum of law.

64. Attached hereto as Exhibit 62 is a true and correct copy of the New York State Department of Labor Opinion Letter of September 23, 1997 cited in plaintiffs' memorandum of law.

65. Attached hereto as Exhibit 63 is a true and correct copy of the New York State Department of Labor Tip Guidelines cited in plaintiffs' memorandum of law.

Dated: New York, New York  
March 15, 2011

/s/ D. Maimon Kirschenbaum  
D. Maimon Kirschenbaum